

ESTTA Tracking number: **ESTTA604791**

Filing date: **05/16/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Nguyen and Tarbet LLC
Granted to Date of previous extension	05/17/2014
Address	4199 Campus Drive Suite 550 Irvine, CA 92612 UNITED STATES
Attorney information	Quan Nguyen Nguyen and Tarbet LLC 4199 Campus Drive Suite 550 Irvine, CA 92612 UNITED STATES judy@ntiplaw.com, quan@ntiplaw.com Phone:949-743-4912

Applicant Information

Application No	85825878	Publication date	03/18/2014
Opposition Filing Date	05/16/2014	Opposition Period Ends	05/17/2014
Applicant	Waterbabies LLC 4521 Renton Ave S Seattle, WA 98108 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 1997/11/01 First Use In Commerce: 1997/11/01
All goods and services in the class are opposed, namely: Swimming instruction

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Other	Misrepresentation of first interstate use in commerce

Attachments	WHIL_13_01_TM_Notice_of_Opposition_docs.pdf(239889 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Quan Nguyen/
Name	Quan Nguyen
Date	05/16/2014

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Lana E. Whitehead,)	
)	
Opposer,)	
)	
v.)	Application Serial No. 85-825878
)	
Waterbabies LLC,)	
)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

Opposer, Lana E. Whitehead, an Individual (“Opposer”) having a principal place of business at 2725 W. Guadalupe Road, Mesa, AZ 85202-7236, believes that it will be harmed by the registration of the mark, “WATERBABIES”, shown in Application Serial No. 85-825878, filed January 17, 2013, by Waterbabies LLC (“Applicant”) for goods and services classified in International Class 041 and hereby opposes the same. A description of the Applicant’s application is as follows:

MARK: WATERBABIES

SERIAL NO.: 85-825878

FILED: January 17, 2013

CLASS: 041

GOODS: Swimming instruction

As grounds for the opposition, Opposer alleges that:

1. Opposer has been engaged in the business of rendering education services, namely, providing classes, seminars, and workshops in the field of swimming under the trademark WATER SMART BABIES and is the owner of the WATER SMART BABIES mark in these fields. (See attached Exhibit "A" U.S. Application Serial No. 86-120358).
2. Applicant is using the mark WATERBABIES in connection with "swimming instruction." The mark WATERBABIES is merely descriptive because it describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant's goods and/or services. See 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005). The term WATER is recognized in the field of swimming instruction as a medium in which a person swims. In addition, the word BABIES is defined as "an infant or very young child." The wording WATERBABIES, then, when considered in connection with the services at issue, would be perceived by consumers as nothing more than a description of educational services, namely swimming instruction, intended for infants or very young children. Accordingly, as this describes a feature and characteristic of applicant's services, the mark must be deemed to be merely descriptive.
3. Further, Applicant claims to have continuously used the mark WATERBABIES in interstate commerce since at least as early as November 01, 1997. The Opposer has grounds to believe that the Applicant misrepresented the first use in interstate commerce date to the USPTO.

Wherefore, Opposer requests that Application Serial No. 85-825878 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained with prejudice in favor of Opposer.

Dated: May 16, 2014

Respectfully submitted,



Quan Nguyen
Nguyen & Tarbet, LLC

4199 Campus Drive, Suite 550
Irvine, CA 92612
Tel: (949) 725-2204
Fax: (800) 861-3071

Attorney for Opposer, Lana E. Whitehead

Certificate of Service

The undersigned hereby certifies that the foregoing Notice of Opposition to Serial No. WATERBABIES, in Class 041 was served on Applicant, Waterbabies LLC, by mailing a true copy, by first class mail on May 16, 2014, postage prepaid, to the Applicant at the designated correspondence address of 4521 Renton Ave S, Seattle, WA 98108.



Quan Nguyen
Nguyen & Tarbet LLC
4199 Campus Drive, Suite 550
Irvine, CA 92612
Tel: (949) 743-4912
Fax: (800) 861-3071

EXHIBIT A

EXHIBIT A

PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 12/31/2014)

Trademark/Service Mark Application, Principal Register**TEAS Plus Application****Serial Number: 86120358****Filing Date: 11/15/2013**

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	<u>WATER SMART BABIES</u>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	WATER SMART BABIES
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Whitehead, Lana E.
*STREET	2725 W. Guadalupe Road
*CITY	Mesa
*STATE (Required for U.S. applicants)	Arizona
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	85202-7236
PHONE	480-820-9109
LEGAL ENTITY INFORMATION	

*TYPE	INDIVIDUAL
* COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
* INTERNATIONAL CLASS	041
*IDENTIFICATION	Education services, namely, providing classes, seminars, workshops in the field of swimming
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/00/2011
FIRST USE IN COMMERCE DATE	At least as early as 10/00/2011
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT16\861\203\86120358\xml1\ FTK0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\861\203\86120358\xml1\ FTK0004.JPG
SPECIMEN DESCRIPTION	screen shot of the website showing the mark being applied for registration
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Quan Nguyen
ATTORNEY DOCKET NUMBER	WHIL 13.01-TM
FIRM NAME	Nguyen & Tarbet
STREET	4199 Campus Drive Suite 550
CITY	Irvine
STATE	California
COUNTRY	United States

ZIP/POSTAL CODE	92612
PHONE	949-743-4912
FAX	800-861-3071
EMAIL ADDRESS	Quan@ntiplaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
* NAME	Quan Nguyen
FIRM NAME	Nguyen & Tarbet
* STREET	4199 Campus Drive Suite 550
* CITY	Irvine
* STATE (Required for U.S. applicants)	California
* COUNTRY	United States
* ZIP/POSTAL CODE	92612
PHONE	949-743-4912
FAX	800-861-3071
* EMAIL ADDRESS	Quan@ntiplaw.com;judy@ntiplaw.com
* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
* TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Lana E. Whitehead/
* SIGNATORY'S NAME	Lana E. Whitehead
* SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	480-820-9109
* DATE SIGNED	11/14/2013

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 86120358

Filing Date: 11/15/2013

To the Commissioner for Trademarks:

MARK: WATER SMART BABIES (Standard Characters, see [mark](#))

The literal element of the mark consists of WATER SMART BABIES.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Lana E. Whitehead, a citizen of United States, having an address of
2725 W. Guadalupe Road
Mesa, Arizona 85202-7236
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 041: Education services, namely, providing classes, seminars, workshops in the field of swimming

In International Class 041, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 10/00/2011, and first used in commerce at least as early as 10/00/2011, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) screen shot of the website showing the mark being applied for registration.

[Specimen File1](#)

[Specimen File2](#)

The applicant's current Attorney Information:

Quan Nguyen of Nguyen & Tabet
4199 Campus Drive Suite 550
Irvine, California 92612
United States

The attorney docket/reference number is WHIL 13.01-TM.

The applicant's current Correspondence Information:

Quan Nguyen
Nguyen & Tarbet
4199 Campus Drive Suite 550
Irvine, California 92612
949-743-4912(phone)
800-861-3071(fax)
Quan@ntiplaw.com;judy@ntiplaw.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Lana E. Whitehead/ Date Signed: 11/14/2013
Signatory's Name: Lana E. Whitehead
Signatory's Position: Owner

RAM Sale Number: 86120358
RAM Accounting Date: 11/18/2013

Serial Number: 86120358
Internet Transmission Date: Fri Nov 15 16:33:26 EST 2013
TEAS Stamp: USPTO/FTK-174.30.155.120-201311151633269
59152-86120358-500184d19fa7c5396409f89a4
8e8dd197cfae6c778ccc9c423decd41fae8ee976
-CC-3671-20131114161552013801

WATER SMART BABIES

WATER SMART *Babies*

Learn More:

- Home
- How to Participate
- Implement the Rx Program in Your State
- AZ Handbook
- Safety Devices
- Swim Facilities
- Supervision
- Learn CPR
- Media
- Sponsors
- Contact Us

Prescription Form



Download Our
Prescription Form!

Say Hello!

For more information:

Melissa Sutton
melissa.sutton@swimkidsusa.us

Lana Whitehead
400-820-9109
lana@swimkidsusa.us

Kim Burgess
kimaburgess@aol.com

With Help From:

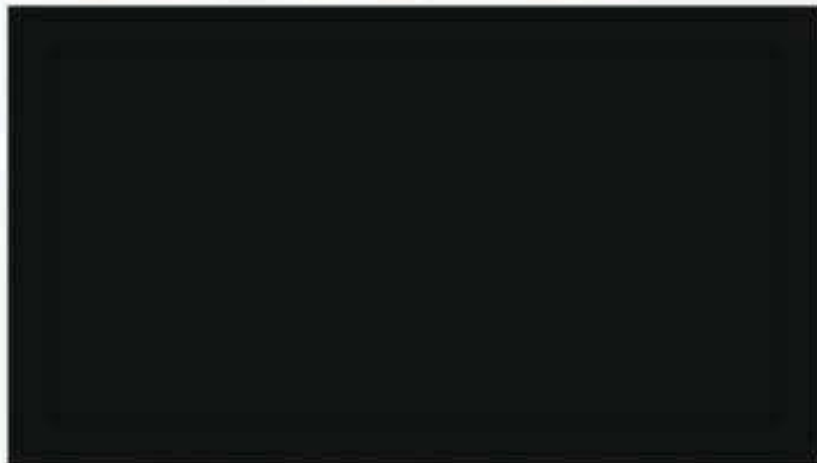


Locate a Facility
in Your Area

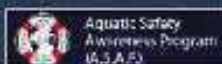


Pediatricians Sign on
to Swim Lessons
Learn Why
You Should Too!

Welcome to Water Smart Babies!



Prescription for water safety is the latest movement in drowning prevention. The Water Smart Babies Program was adopted by the Florida Pediatric Society, the state chapter of the American Academy of Pediatrics and launched February 2010. The Florida doctors baby well visits now include water safety education. On the child's ninth and twelve month visits, the pediatrician writes out a "Doctor's prescription" for water safety lessons! The parents are also given the Water Smart Babies handbook which includes tips on home water safety, water safety lesson facilities (by county), CPR classes (by county) and safety device information, such as pool fencing, door and



pool alarms. As the child visits the pediatrician in subsequent months the doctor follows up to make sure the family is getting their home equipped with the layers of protection and the child is participating in water safety lessons.

We are proud to announce that the Water Smart Babies Program is being adopted nationwide. Please click on your geographic area to find swim facilities, fence and alarm companies, CPR & First Aid classes who are participating in this program.



The majority of drownings occur in residential pools while children are unattended.

[READ MORE](#)

What is this About?

Water Smart Babies is here to support your efforts in keeping your children safer around your pool. Your involvement is the most important factor in helping you prevent, prepare for and cope with emergencies. The resources contained in this site will provide you with useful tools to help make your children water safe and Water SMART (Safety Methods and Rescue Techniques).



[Home](#) | [Participate](#) | [Implement](#) | [Safety Devices](#) | [Swim Facilities](#) | [Media](#) | [Sponsors](#) | [Contact Us](#)

Copyright ©2011 Water Smart Babies | All rights reserved.

Site Design by Short Grain Media